

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<b>I. (a) PLAINTIFFS</b> Shannon Baum		<b>DEFENDANTS</b> Officers Michael Ortega, Martin Vigil, Greg Esparza, The Espanola Police Department, The City of Espanola																																																																																															
<b>(b) County of Residence of First Listed Plaintiff</b> <u>Rio Arriba</u> <small>(EXCEPT IN U.S. PLAINTIFF CASES)</small>		<b>County of Residence of First Listed Defendant</b> <u>Rio Arriba</u> <small>(IN U.S. PLAINTIFF CASES ONLY)</small>																																																																																															
<b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b> Daniel R. Marlowe, PO Box 8207, Santa Fe, NM 87504 (505) 988-1144/fax (505) 820-7652		<small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</small>																																																																																															
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FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO**

**Shannon Baum,**

**No. \_\_\_\_\_**

**Plaintiff,**

**vs.**

**Officer Michelle Ortega, Officer Martin Vigil, Officer Greg Esparza,  
and JOHN DOES 1 THROUGH 10 in his/her official capacity  
as employees/ law enforcement officers of Espanola Police Department;  
Espanola Police Department, a Department of the City of Espanola, State of New Mexico; and  
The City of Espanola, State of New Mexico, County of Rio Arriba, State of New Mexico.**

**Defendants.**

**CIVIL COMPLAINT FOR DAMAGES FOR DEPRIVATION OF  
CIVIL AND CONSTITUTIONAL RIGHTS, COMMON LAW TORTS,  
AND STATUTORY RIGHTS**

**COMES NOW** the Plaintiff, in her own capacity, by and through the undersigned attorney, and in support of this Civil Complaint for damages against Defendants does respectfully allege as follows:

**INTRODUCTION**

1. This Complaint alleges federal and state civil rights, state common law claims, and statutory violations against persons and entities responsible for detaining and incarcerating Plaintiff at the City of Espanola Police Department. These claims arise from the deliberate and conscious violation of Plaintiff's rights, the failure of Defendants to adequately protect Plaintiff, and the failure of Defendants to follow proper standard of care within the scope of their employment and duties as law enforcement officers.

2. On or about June 7, 2011 Plaintiff was detained and incarcerated when at least three police officers beat, threatened and otherwise assaulted and battered Plaintiff.

3. Defendant officers violated Plaintiff's civil rights and occurred while he/or she were on duty, performing his/her duties and responsibilities as a law enforcement officer with the Espanola Police Department.

4. Defendants were responsible for ensuring that Plaintiff's civil rights were maintained while in their custody and that proper procedures were followed.

5. Instead, Plaintiffs rights were deliberately and consciously ignored and disregarded by Defendants.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over Plaintiff's claims pursuant to pursuant to title 42 U.S.C. 1983 and Section 41-4- 12 NMSA 1978 and 42 U.S.C. 1983.

7. All actions complained of herein occurred in the City of Espanola, County of Rio Arriba, State of New Mexico.

8. Notice of this claim was given to Rio Arriba County pursuant to NMSA 41-1-16 on August 2, 2011.

#### **PARTIES**

9. The Plaintiff is, and at all times material hereto, was a resident of Rio Arriba County, New Mexico.

10. Upon information and belief, the Defendants Officer Michelle Ortega, Officer Martin Vigil, Officer Greg Esparza, and John Does 1 through 10 were employees and acted in

their official capacity as law enforcement officers and/or agents of Espanola Police Department, City of Espanola, State of New Mexico.

11. At all times relevant hereto, the Defendants Officer Michelle Ortega, Officer Martin Vigil, Officer Greg Esparza and John Does 1 through 10 were acting under the color of law and under the color of their authority as police officers and/or employees of Espanola Police Department.

12. The Defendants John Does 1-10 are unknown police officers and/ or employees employed by the Espanola Police Department at the time of Plaintiff's detention/incarceration and in connection with Plaintiff's claims, are being sued both individually and in their official capacity as officers/employees of the Espanola Police Department.

13. The Defendant Espanola Police Department is and at all times relevant hereto, located in the City of Espanola, County of Rio Arriba, State of New Mexico and is an agency of the City of Espanola, the State of New Mexico. The Defendant Espanola Police Department is liable for the conduct of its officers and/or employees under the doctrine of agency and/or *respondeat superior*.

14. At all times relevant hereto, the Defendants were acting for and on behalf of the City of Espanola, as agents thereof and were employed by the City of Espanola.

15. The Defendant City of Espanola is at all times relevant hereto, located in the City of Espanola, County of Rio Arriba, State of New Mexico . The municipality City of Espanola is liable for the misconduct of its agents under the doctrine of agency and *respondeat superior*.

## **BASES FOR CAUSES OF ACTION**

16. 42 U.S.C. § 1983, New Mexico State Torts Claims Act, NMSA 1978, § 41-4-12, the U.S. and New Mexico Constitutions, and New Mexico Common Law.

## **FACTS COMMON TO ALL CAUSES OF ACTION**

17. Plaintiff incorporates herein the paragraphs above as if the same were set forth anew.

18. On or about June 7, 2011, at approximately 6: 19 P.M., Plaintiff was assaulted and severely battered by Defendant Espanola Police Officers acting in their official capacity as law enforcement agents of the Espanola Police Department .

19. At the time and place in question, Plaintiff was washing her vehicle at the F & A Zip Car Wash & Self Storage 626 La Joy a Street, Espanola New Mexico, when Officer Michelle Ortega approached her and asked her to pull her car to the side of the car wash. Officer Ortega inquired why Plaintiff's eyes were red and Plaintiff stated she had been crying. Officer Ortega performed field sobriety tests and placed Plaintiff under arrest for driving under the influence.

20. Plaintiff attempted to gain entry to her vehicle upon being told she was arrested. When Plaintiff was seated in the driver seat of her vehicle, Officer Ortega aggressively placed her body on top of the Plaintiff. Plaintiff attempted to push the officer off her and both parties fell to the ground. Police officer Vigil and Police officer Esparza arrived on the scene and Plaintiff threw her hands in surrender and stated "Okay, Okay". The Plaintiff was maced several times in the face and forcibly slammed against the asphalt driveway of the car wash, face to the floor while the officers handcuffed her.

21. Plaintiff started to cough violently and could not breathe from the excessive mace.

22. Plaintiff continued to scream in pain from the intense burning sensation and her inability to breathe. Plaintiff could not breathe normally nor open her eyes.

23. The officers placed a gag bag tightly around Plaintiff's head which further diminished

Plaintiff's ability to breathe and placed Plaintiff in a life-threatening situation: Plaintiff reasonably believed that she was suffocating as she gasped uncontrollably. Plaintiff was hyperventilating from the serious blockage of the airways.

24. As the Defendant officer belted Plaintiff in, he struck Plaintiff with his elbow forcibly into her side.

25. Plaintiff was transported to the Espanola Police Department, approximately 2.3 miles from the incident. Plaintiff was taken to a room where the bag was removed. Plaintiff was unable to see. Plaintiff was led to a shower and told to take her clothes off, while warm water was turned on. Plaintiff removed her clothing.

26. As a result of the warm water, the burning sensation increased. Plaintiff immediately washed her eyes as she believed that she was blinded. Plaintiff continued to cry as the condition worsened. Plaintiff, unable to see, overheard three or four officers standing by the shower laughing and making jokes about her.

27. Plaintiff suffered physical injuries and mental anguish as a result of Defendants' actions.

28. After the shower, Plaintiff was escorted to a jail cell and given a jump suit where she lay on the cold concrete floor trying to find relief from the burning. Plaintiff was given water due to the extreme thirst caused by the excessive macing.

29. Plaintiff was transported to the Santa Fe County Detention Center where she changed clothes given to her by a female officer. A nurse, at this point, consulted with Plaintiff. Plaintiff informed the nurse that she was in a lot of pain and that her vision was blurred.

30. Plaintiff reports she was in extreme pain and felt as if she were on fire for the first 48 hours. Plaintiff was unable to see anything but blurred forms.

31. Plaintiff reports she was unable to stand in a shower until the fourth day of incarceration and was unable to wash herself and mace out of her hair until the seventh day.

32 . Plaintiff reports that she did not feel relief from the effects of macing until fourteen